

Appl. No. 10/749,567
Amendment dated: February 8, 2005
Reply to OA of: November 8, 2004

REMARKS

Applicant notes the indication that claim 7 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 7 is dependent on claim 6 which is dependent on claim 1. While Applicant appreciates the indication of allowable subject matter of claim 7, it is believed that the claims as now amended are equally patentable over the prior art of record. Applicant has amended claim 1 to incorporate the limitations of claims 6 and 8 and canceling claims 6 and 8. In addition, claim 7 has been amended to correct the dependency thereby making claim 7 dependent upon claim 1. Accordingly, it is believed that claim 7 is now allowable as are all of the claims remaining in the application.

Applicant has amended the claims to more particularly define the invention taking into consideration the outstanding Official Action. Claim 1 has been amended to incorporate the limitations of claims 6 and 8 thereto. Claims 7 and 9 have been amended to correct the dependencies. Claims 2-3, 5-6 and 8 have been canceled without prejudice or disclaimer.

Applicant most respectfully submits that all the claims now present in the application are in full compliance with 35 U.S.C. §112 and are clearly patentable over the references of record.

The rejection of claim 1 under 35 U.S.C. §102(b) as being anticipated by Hegge et al. has been carefully considered but is most respectfully traversed in view of the amendments to the claims.

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Applicant wishes to direct the Examiner's attention to MPEP § 2131 which states that to anticipate a claim, the reference must teach every element of the claim.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Applicant believes the combination of the limitations of claims 6 and 8 into amended claim 1 inserting "circumventive frame" and "fixing member" distinguishes the presently claimed invention over the prior art. These added limitations are clearly supported by the application as originally filed which include the original claims. Accordingly, it is most respectfully requested that this rejection be withdrawn.

The rejection of claims 1, 4, 6, 8 and 9 under 35 U.S.C. 103 as unpatentable over Morgan in view of Hsu has been carefully considered but is most respectfully traversed in view of the amendments to the claims and the following comments. Moreover, the rejection refers to the Hegge reference of page 4 of the rejection. This reference is not included in the statement of the rejection and it may be a typographical error for Hsu. Clarification is requested if the rejection is maintained.

Applicant wishes to direct the Examiner's attention to the basic requirements of a prima facie case of obviousness as set forth in the MPEP § 2143. This section states that to establish a prima facie case of obviousness, three basic criteria first must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to

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modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Section 2143.03 states that all claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Applicant also most respectfully directs the Examiner's attention to MPEP § 2144.08 (page 2100-114) wherein it is stated that Office personnel should consider all rebuttal argument and evidence present by applicant and the citation of In re Soni for error in not considering evidence presented in the specification.

Applicant believes that the amended claim 1 is distinct and unobvious from the combination of Morgan and Hsu. Morgan is a design patent and it is not clear how the modifications would be suggested to one of ordinary skill in the art without the use of Applicant's disclosure which is impermissible hindsight. In addition, since the bendable portions located at the upper side of the fixing member are different from those of the cited references, it is believed that claims 4 and 9 are also distinct and unobvious. Accordingly, it is most respectfully requested that this rejection be withdrawn.

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In view of the above comments and further amendments to the claims, favorable reconsideration and allowance of all of the claims now present in the application are most respectfully requested.

Respectfully submitted,

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